IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No.334 of 2001
(Old No.1390 of 1986)

1. Dhan Singh S/o Diwan Singh
2. Smt. Devki W/o Dhan Singh
3. Meharwan Singh S/o Dhan Singh
4. Mahitab Singh S/o Khadar Singh
   R/o Village Rohida, Patwari Circle Rohida, Tehsil Karanprayag, District Chamoli

..... Appellants

Versus

The State .....Respondent

Dated: December 5, 2007

Sri. H.S. Rawal holding brief of Sri V.B.S. Negi, learned counsel for the appellants
Sri. M.A. Khan, learned brief holder for the State

HON. DHARAM VEER, J.

This criminal appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*) is directed against the judgment and order dated 01/03.05.1986 passed by Sessions Judge, Chamoli in Sessions Trial No. 18 of 1985, whereby the learned Sessions Judge has convicted the appellants under Section 325 r/w 34 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*). Appellant Nos.1 and 2 Dhan Singh and Smt. Devki Devi respectively were sentenced to six months R.I. and fine of Rs. 1,000/- each u/s 325/34 IPC and in default of payment of fine, three months further R.I. to each of them was awarded. Appellant Nos.3 and 4 Meharwan Singh and Mahitab Singh respectively were sentenced to one year's R.I. and fine of Rs. 1000 /- each u/s 325/34 IPC and in default of fine, three months further R.I. was awarded to each of them. However, they were acquitted of the charge u/s 302/34 of IPC.

2. CJM, Chamoli-Gopeshwar vide his report dated 30.11.2007 has informed that appellant No.1 Dhan Singh, No.2 Smt. Devki Devi and No.3 Meharwan Singh have died, hence the appeal against Appellants No.1 to 3 stands abated. Now, the appeal only survives against the appellant No.4-Mahitab Singh.

3. In brief, the prosecution case is that on 25.10.1984 at about 12:30 P.M., Dev Singh was working in his field and in the meanwhile, appellants Dhan Singh, Smt. Devki, Meharvan Singh and Mahitab Singh reached on the place of occurrence and started abusing Dev Singh. When Dev Singh asked them that why they were abusing him, then all the appellants started pelting stones on him due to which Dev Singh received injuries on his head. After getting the information, Dr. Vinod Pratap Singh, Ayurvedic Medical Officer reached on the place of occurrence and the doctor gave the first aid to the injured Dev Singh. After a about one hour of the medical treatment, Dev Singh died on the spot. The said incident was witnessed by Umed Singh, Raje Singh, Smt. Kunti Devi, Smt. Bachuli and Kishan Singh. With the same averments, the report was lodged by Bahadur Singh Rana to Patti Patwari Rohida, Distt. Chamoli on 25.10.1984 at 6:00 P.M., i.e. Ex.Ka-2. On the basis of this report, Patwari Rohida prepared the Chik FIR, that is Ex.Ka-3. (In rural hilly areas of Uttarakhand, the Patwaris are being vested with Police Powers). The post-mortem of the dead body of Dev Singh was conducted on 27.10.1984 at 1:30 P.M., the copy of post-mortem is Ex.-Ka-1. During the course of investigation, the I.O./Patwari inspected the place of occurrence and prepared the site plan of the place of occurrence i.e. Ex.Ka-4. The inquest report was also prepared by the I.O., the inquest report is Ex.Ka-5. During the course of investigation, the I.O. recorded the statements of the witnesses and after completing the investigation, the Patwari/I.O. has submitted the charge sheet against the appellants Dhan Singh, Smt. Devki, Meharvan Singh and Mahitab Singh, that charge sheet is Ex.Ka-6.

4. Learned Munsif Magistrate, Karanpryag has committed the case to the court of Sessions on 20.11.1985 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

5. On 29.11.1985, the Sessions Judge, Chamoli framed the charge against the appellants Dhan Singh, Smt. Devki Devi, Meharvan Singh and Mahitab Singh u/s 302 r/w 34 of IPC. The charge was read over and explained to the appellants who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined P.W.1 Dr. Ramesh Chandra, who has conducted the post-mortem of dead body of Dev Singh, P.W.2 Dr. Vinod Pratap Singh, Medical Officer who had provided first aid to deceased Dev Singh, P.W.3 Bahadur Singh, who is the complainant of the case, P.W.4 Umed Singh, eyewitness, P.W.5 Smt. Buthadi Devi, also an eyewitness, P.W.6 Bachuli Devi, also an eyewitness and P.W.7 Purnanand Barmola, Patwari/I.O. of the case.

7. Thereafter, the statements of the appellants were recorded u/s 313 of Cr.P.C. who have denied the allegations made against them. They had not produced any oral evidence but in the documentary evidence, they filed some documentary evidence, i.e. Ex.Kha.-1 to Ex.Kha-11.

8. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned Sessions Judge, Chamoli vide his judgment and order dated 01/03.5.1986 convicted the appellants under Section 325 r/w 34 of IPC. Appellant Nos.1 and 2 Dhan Singh and Smt. Devki Devi respectively were sentenced to six months R.I. and fine of Rs. 1,000/- each u/s 325/34 IPC and in default of payment of fine, three months further R.I. to each of them was awarded. Appellant Nos.3 and 4 Meharwan Singh and Mahitab Singh respectively were sentenced to one year's R.I. and fine of Rs.1,000/- each u/s 325/34 IPC in default of fine, three months further R.I. was awarded to each of them. However, the appellants were acquitted for the charge punishable u/s 302/34 IPC. Feeling aggrieved by the said judgment and order dated 01/03.5.1986, the appellants have preferred the present appeal.

9. I have heard Sri H.S. Rawat holding brief of Sri V.B.S. Negi, learned counsel for the appellants and Sri M.A. Khan, learned brief holder for the State and perused the entire material available on record.

10. To prove its case, the prosecution has examined P.W.1 Dr. Ramesh Chandra who has stated that on 27.10.1984 he was posted as Medical Officer in District Hospital, Gopeshwar. On that day he conducted the post-mortem of the dead body deceased Dev Singh who was brought by peon of Patwari and was also indentified by him. The deceased was about 47 years of age. In the post-mortem, he found the following injuries in his body:-

(i) A lacerated wound 5.5 cm x 5 cm x bone deep on the middle of the frontal part of the skull 9 cm above from the bridge of the nose with irregular everted and lacerated margins. Clotted blood was present around the wound and over left side of face and ear.

(ii) Brownish black bruise 1cm x 1cm over shin of tibia, 20cm below from left knee joint.

(iii) Brownish black bruise 4cm x 3cm just below the injury no.2.

(iv) Brownish black bruise 1.5cm x 1cm over inner aspect of right knee joint, 6 cm inwards from the right know joint.

The doctor has also opined that the death of Dev Singh was caused due to shock and hemorrhage as a result of head injury. The doctor has also prepared the post-mortem report of deceased Dev Singh, i.e. Ex.Ka-1.

11. P.W.2 is Vinod Pratap Singh who has stated that on 25.10.1984, he was posted as Medical Officer in Rohida Government Ayurvedic Hospital. After calling by a young-man of about 20-22 years, he reached in Village Rohida where Dev Singh was lying in the field in an injured condition and he was unconscious and the blood was oozing out from his head. He has given the first aid to him and applied bandage on his head. Since the condition of the injured was serious, hence he advised to report the matter to the police and also referred the injured to District Hospital, Gopeshwar. In the cross-

examination he has stated that the person who had come to call him had informed him that a bull had caused injury to one person and for the treatment of that person, he was called.

12. P.W.3 is Bahadur Singh, who is a hearsay witness of the case. He had not seen the incident. He has stated that the incident was of 25.10.1984 and at the time he was in his house. A person namely Nandan Suingh came to him and informed him that appellant have badly beaten Dev Singh. He also informed him that the injuries were caused to Dev Singh by stones. He reached on the place of occurrence and found Dev Singh lying in an injured condition and so many people were also gathered there. Dev Singh was unconscious and in his head, injury was there. He lodged the report to the Patwari, that report is Ex.Ka-2. He is the hearsay witness and he had not seen the incident.

13. P.W.4 is Umed Singh who has stated that the said incident took place on 25.10.1984. During those days, he was on leave for Deepawali vacations. The time was about 11-11:30 AM, at that time Dev Singh and other appellants were working in their respective fields and he was also working in his field. The said quarrel started at 10:30 AM in the morning and the appellants had caused injury to Dev Singh by pelting stones on him. He has also stated that Meharwan Singh had constructed a wall in the land of Dev Singh and for this reason, Meharwan Singh and Dev Singh were having enmity and for this reason, the quarrel took place between them.

14. P.W.5 is Smt. Buthadi Devi who has also stated that the said incident took place in the daytime when she was working in the field along with his son in law Dev Singh and her two daughters. As that time, the appellants were also working there in their own field. She has also stated in her statement that the appellants had pelted stones on Dev Singh due to which Dev Singh received injury on his head.

15. P.W.6 is Bachuli Devi, who is the wife of deceased Dev Singh, has stated in her statement that she along with her husband dev Singh was working in the field. The daytime was there. The appellants were also working in their fields respectively and when the quarrel started, all of them reached in the courtyard of Dhan Singh and all of the appellants pelted stones on Dev Singh due to which Dev Singh has received injury on his head.

16. P.W.7 is Purnandan Barmola who is the Patwari/IO of the case, has stated that on 25.10.1984 he was posted as Patwari Rohida. On the same day, Umed Singh had come to him with a report and on the basis of that report, he had prepared the Chik FIR i.e. Ex.Ka-3 and after that he had gone to the place of occurrence and on the spot, he prepared the inquest report and the site plan of the place of occurrence; the site plan is Ex.Ka-4 and inquest report is Ex.Ka-5. From the place of occurrence, he has also taken the blood stained clay and stones and the clothes of deceased in his possession. He has also identified the said clothes as Exs.2, 3 and 4 i.e. on bed sheet, on basket and one bandage applied on the head of deceased. The stone, which was recovered from the place of occurrence, is Ex.1 and the blood stained clay is Ex.5. He further submitted that he had prepared the Fard for taking all these articles but that is not available on the record. During the course of the investigation, he recorded the statements of the witnesses and after completing the investigation, he submitted the charge sheet against the appellants, i.e. ExKa-6.

17. Thereafter, the statements of the appellants were recorded u/s 313 Cr.P.C. They had denied the allegations made against them and stated that they have been falsely implicated due to enmity. They had not produced any oral evidence but in the documentary evidence, the filed some documentary evidence, i.e. Ex.Kha-1 to Ex.Kha-11.

18. Learned counsel for the appellant submitted that in the present case, there was enmity between Dev Singh and Meharvan Singh due to the reason that Meharvan Singh had constructed a wall in the field of Dev Singh. He further submitted that there is no enmity between Appellant No.4-Mahitab and deceased Dev Singh and there is no motive against the present appellant-Mahitab and whatever the motive and enmity was there, that was between Dev Singh and Meharvan Singh. I find force in the argument advanced by learned counsel for the appellants. From the statement of P.W.4 Umed Singh as well as from the documents filed by the appellants in their defence i.e. Ex.Kha-1 to Ex.Kha-11, it comes out that whatever the litigation was there, that was between Dev Singh and Meharvan Singh & Dhan Singh and the present appellant-Mahitab was not a party in that case. It also shows that due to this reason there was no enmity between the present appellant-Mahitab and Dev Singh and whatever the motive was there, that was against Meharvan Singh, Dhan Singh, father of Meharvan Singh and Smt. Deoki Devi, the mother of Meharvan Singh.

19. Learned counsel for the appellant further submitted that there is only one head injury on the head of Dev Singh and it has came in the evidence of P.W.4 Umed Singh, P.W.5 Smt. Bhutadi Devi and P.W.6 Smt. Bachuli Devi, who were the eyewitnesses of the case, that the appellants had pelted stones upon Dev Singh, however there is only one injury on the head of Dev Singh which creates a doubt in the prosecution story. He also submitted that the presence of the appellants on the place of occurrence also seems to be doubtful. He further submitted that four persons had pelted stones upon Dev Singh as per the statements of P.W.4 Umed Singh, P.W.5 Smt. Buthadi Dev and P.W.6 Smt. Bachuli Devi and there is only one head injury on the head of Dev Singh. He further submitted that if at all the stones could have been pelted by all of the appellants, the injury should have been more than

one on the body of Dev Singh. He further submitted that at this stage, it could not be ascertained that out of the four appellants, who had caused the injury to Dev Singh. This argument advanced by learned counsel for the appellant is sustainable on the basis of the evidence discussed above. As per the statement of P.W.1 Dr. Ramesh Chandra, there was only one lacerated wound on the head of Dev Singh and this fact is also supported by the post-mortem report.

20. Learned counsel for the applicant further submitted that in the FIR lodged by P.W.3 Bahadur Singh, it has been stated that the incident occurred at 12:30 P.M. but in the statement of P.W.4 Umed Singh, it has come that the said incident took place at about 11-11:30 A.M. and the quarrel started at 10:30 A.M. This argument of learned counsel for the appellant has got force. In the statements of P.W.5 Smt. Buthadi Devi and P.W.6 Smt. Bachuli Devi, it has come that the incident had occurred in the day time, however the exact time was not stated in their statements and as such the presence of P.W.4 Umed Singh, P.W.5 Smt. Buthadi Devi and P.W.6 Smt Bachuli Devi also seems to be doubtful as they have not disclosed the correct time of the incident.

21. Learned counsel for the applicant lastly submitted that as per the report of CJM, Chamoli-Gopeshwar, the appellants No.1 to 3 namely Dhan Singh, Smt. Deoki Devi and Meharvan Singh have died who are said to be the main accused of the case and the motive was also shown against them and now the appeal against them stand abated and since the participation of the present appellant-Mahitab and his presence is not proved by the prosecution beyond reasonable doubt, hence he prayed that the present appellant- Mahitab is liable to be acquitted.

22. From the evidence discussed above and in view of above narrated facts and circumstances of the case, it cannot be said with the definite opinion that the present appellant No.4-Mahitab is the only person who had caused injury on the

head of Dev Singh and further his presence on the spot is also doubtful. The prosecution has not successful to prove its case against the present appellant-Mahitab beyond reasonable doubt and the participation of the appellant in the commission of the above said crime also could not be proved by the prosecution.

23. For the reasons recorded above, the appeal of appellant No.4- Mahitab Singh is allowed. He is acquitted for an offence punishable u/s 325/34 IPC and his conviction and sentence u/s 325/34 IPC for one year's R.I. and fine of Rs.1,000/- as awarded by learned Sessions Judge, Chamoli is hereby set aside. He is on bail. He needs no surrender. His bail bonds are cancelled and sureties are discharged.

24. As per the report of CJM, Chamoli-Gopeshwar dated 30.11.2007, appellant No.1 Dhan Singh, No.2 Smt Devki Devi and No.3 Meharwan Singh have died, hence the appeal against Appellants No.1 to 3 stands abated.

(Dharam Veer, J.)

Rajeev Dang